

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3133 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PREMKUMAR R BHATIA

Versus

ENTERTAINMENT TAX COMMISSIONER

Appearance:

MR DU SHAH for Petitioner

Ms. S.D.Talati, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 02/03/2000

ORAL JUDGEMENT

The Divisional Deputy Commissioner at Rajkot made a surprise inspection of matinee show commencing from 3.00 p.m. to 6.00 p.m. of Rupam cinema in Amreli town. 14 in first class and 3 in third class, in all 17 spectators were found without tickets. The

Divisional Deputy Commissioner in his inspection form prepared on 29th January, 1983 at the cinema house, gave all the details. Certain irregularities were found. The Manager of the cinema has also signed that memo. He had not raised any objection or dispute with regard to contents thereof. Thereafter, show cause notice dated 3.5.1984 and 15.5.84 were issued to the petitioner, to which the petitioner filed his reply on 28th May, 1984. The Entertainment Tax Collector, Amreli found the entry of 17 spectators without tickets. The provisions of section 7 of The Entertainment Tax Act, 1977 with Rule 3 of The Gujarat Entertainment Tax Rules, 1979 and in the instance at Serial nos. 2 and 3 by writing false accounts in form no.17 and by not showing stock of the tickets in form no.1, the provisions of section 21(1) of the Act and those of Rule 17(3)(4) of the Gujarat Entertainment Tax Rules, 1977 were not followed by the proprietor of the Cinema. Though the action could have been taken under sections 15 and 16 of the aforesaid Act against proprietor of the said Cinema for the breach of the aforesaid provisions, however, if the proprietor of the Cinema gives his consent not to take actions under sections 15 and 16 and to dispose of the offence under section 18, decision can accordingly be taken. On behalf of the proprietor of the cinema, a written representation was filed wherein it is stated that on the date of the inspection, tickets were issued to 141 spectators in the auditorium and accordingly, form no. 17 was filled up. The Inspecting Officer erroneously made calculation of 158 tickets roughly calculating 16 seats in one row in the third class and first class. The difference of 17 seats was found accordingly. Accounts of the ticket sold was written in form no.17. As such, remarks of the Inspecting Officer with the accounts were not properly kept and were false is not borne out from the form itself. The third lot of approved tickets of the third class for first show was on hand while lot no.1 of approved tickets was already entered in the register, but the mistake appears to have been made because of serial number given in the register, which, in fact, is not a mistake. It is further stated therein that this is his explanation and he had not committed any malpractice. He also requested to dispose of the case.

4. After considering the material on record, the Collector, by his order dated 18.7.84 found the proprietor of Roopam cinema, Amreli guilty on the ground that the proprietor had not followed the provisions of sections 7 and 21(1) of The Gujarat Entertainment Tax Act, 1977 read with rules 3, 16 and 3(4) of The Gujarat Entertainment Tax Rules, 1979 and the case was disposed

of directing the proprietor to pay penalty of Rs.2000/to be deposited under the head of "045 other Taxes and duties on commodities and services (A) Entertainment Tax Collection (2) Additional Tax".

5. Being aggrieved by the said order of the Collector, the petitioner filed a Revision Application before Entertainment Tax Commissioner, Gujarat State, Gandhinagar, who, after considering the material on record and the submissions of the learned counsel for the petitioner, by his order dated 13th September, 1984, dismissed the Revision Application and confirmed the order dated 18.7.84 passed by the Entertainment Tax Collector, Amreli. Therefore, the petitioner has filed this petition before this Court.

6. The learned counsel for the petitioner submitted that the power of search is conferred on the Prescribed Officer under section 22 of the Act. The Prescribed Officer means, the officer prescribed under sub-section (1) of section 8 of the Act, who is an Inspector, Mamlatdar or Deputy Collector. The Divisional Deputy Entertainment Commissioner, Rajkot carried out the search and seizure on 29th January, 1983 by a notification dated 3rd March, 1984 in exercise of the power under section 11(A)(b)(b) of the Act. The Deputy Commissioner of Entertainment Tax has been conferred the powers under section 22 of the Act in the area within their respective jurisdiction. As such, on the date of the raid or surprising checking on 29th January, 1983, the Deputy Commissioner or even the Divisional Deputy Commissioner of Entertainment Tax had no jurisdiction to exercise powers under section 22 of the Act regarding inspection, seizure and search etc.

7. I have carefully considered the submissions of the learned counsel for the petitioner in this regard. It appears that the petitioner has neither raised this question nor challenged the jurisdiction of the raiding party, Divisional Deputy Commissioner, Entertainment Tax, Rajkot or the Deputy Commissioner, Entertainment Tax of that area at the relevant time nor he has raised this question of jurisdiction in his reply filed before the Entertainment Tax Collector when the case was heard and decided. It appears that for the first time, this question was raised before the Entertainment Tax Commissioner, State of Gujarat. Therefore, it would be difficult to decide that question of jurisdiction at this stage, though the Entertainment Tax Commissioner, State of Gujarat has not taken into consideration this aspect regarding jurisdiction of the

raiding party. No doubt, the power has been conferred to the Deputy Commissioner by a notification dated 3rd March, 1984 but it is possible that some ordinance might have issued and that ordinance must have been later on substituted by this notification. As this question regarding jurisdiction was not raised at the initial stage or before the Entertainment Tax Collector, it is too difficult to decide that question at this stage. Moreover, it appears that 17 persons were found without tickets at the time of raid in the Cinema hall watching the picture. In that respect, the form was not properly filled up, as a result, penalty of Rs.2000/- was imposed by the Entertainment Tax Collector.

7. Considering the facts and circumstances of the case, I do not find any good reason to interfere with the impugned order, in exercise of extraordinary powers under Articles 226 and 227 of the Constitution of India. Accordingly, this petition has no merits and is liable to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs.

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